No. 94-1511

In The

Supreme Court of the United States

October Term, 1995

SAMUEL LEWIS, *et al.*,

Petitioners,

v.

FLETCHER CASEY, JR., *et al.*,

Respondents.

On Writ Of Certiorari To The
United States Court Of Appeals
For The Ninth Circuit

BRIEF OF PRISONERS IN NORTHERN CALIFORNIA CLASS ACTIONS AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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INTERESTS OF AMICI CURIAE

Amici curiae are county, state and federal prisoner plaintiffs in four class action lawsuits pending in the United States District Court for the Northern District of California: Hayes v. Reno, No. C 93 2609 TEH (N.D. Cal.)(Alameda County California Santa Rita Jail); Madrid

v. Gomez, No. C 90 3094 TEH (N.D. Cal.)(California Department of Corrections Pelican Bay State Prison); Thompson v. Enomoto, 79-1630 SAW (N.D. Cal.) (California Department of Corrections San Quentin State Prison); and Toussaint v. McCarthy, 73-1422 SAW (N.D. Cal.)(California Department of Corrections Deuel Vocational Institution and Soledad State Prisons). Each case involves the prisoners' constitutional right of access to the courts through the provision of law libraries and the assistance of persons trained in the law.[1/]

In Hayes, the district court has postponed trial, and in Madrid, the district court has postponed entering judgment on the plaintiffs' access to the courts claim, pending the decision in this case. In Thompson and Toussaint, the plaintiffs' access to law libraries and legal assistance is governed by a consent decree and a stipulated permanent injunction, respectively, which may be affected by the decision here.

Since indigent prisoners' right to the appointment of counsel at state expense for post conviction proceedings is not established,[2/] amici curiae need law libraries and trained legal assistance in order to obtain access to the courts. Only through the use of prison law libraries and, in appropriate instances, the assistance of persons trained in the law can they adequately pursue habeas corpus and

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[1/] Pursuant to Supreme Court Rule 37.3, letters expressing the written consent of all parties to the filing of this brief have been filed with the Clerk.

[2/] Coleman v. Thompson, 501 U.S. ___, 115 L.Ed.2d 640 (1991); Murray v. Giarratano, 492 U.S. 1 (1989); Pennsylvania v. Finley, 481 U.S. 551 (1987).

civil rights actions and thereby assert their rights to post-conviction relief and to humane conditions of confinement.

SUMMARY OF THE ARGUMENT

Many of the seminal prisoner rights cases decided by this Court in the last two decades were filed by prisoners pro se. See, e.g., Hudson v. McMillian, 503 U.S. 1, 117 L.Ed.2d 156 (1992); Bell v. Wolfish, 441 U.S. 520 (1979); Estelle v. Gamble, 429 U.S. 97 (1976). The ability of these prisoners to bring their cases to the attention of the federal courts was critical to the protection of their constitutional rights and to the development of a just and humane correctional system in this country.

Without the fundamental right of access to the courts, and the provision of law libraries and legal assistance guaranteed by Bounds v. Smith, 430 U.S. 817 (1977), many prisons nationwide would still be characterized as "a dark and evil world completely alien to the free world." Hutto v. Finney, 437 U.S. 678, 680 (1978).

In light of the fact that prisoners now face lengthy mandatory prison sentences, they must navigate a highly technical habeas corpus and post-conviction appeals process, and they must maneuver through the increasingly complex jurisprudence under 42 U.S.C. § 1983, the right of access to the courts is more critical today than at any time in the past. Moreover, there are significant collateral benefits to insuring prisoners' right of meaningful access to the courts.

The Court should uphold the grant of injunctive relief in this case, should strongly reaffirm Bounds v. Smith, and should clarify that prison authorities are required to provide that combination of law library access

and trained legal assistance that is necessary to ensure prisoners' right of meaningful access to the courts.

ARGUMENT

Petitioners concede that the fundamental right of access to the courts, set forth in Bounds v. Smith, 430 U.S. 817 (1977), remains as vital today as it was when Bounds was decided 18 years ago. Neither the Petitioners nor the amici in support of the Petitioners urge the Court to overrule or cut back on Bounds or to otherwise alter the constitutional framework established by that case. See Brief of Petitioners at 36 (Bounds establishes "the foundation for what is necessary to ensure inmates' access to the courts."); Brief Amicus Curiae of the Criminal Justice Legal Foundation at 4, 23 (Bounds governs prisoners' right of access to the courts); Brief of Amici Curiae Washington Legal Foundation, et al. at 15 (acknowledging Arizona's obligation to "comply with the mandate of Bounds"). Petitioners' acknowledgment of Bounds' continuing viability is clearly the correct view. Nothing in the years since Bounds was decided diminishes the constitutional and practical underpinnings of that decision.

While accepting the viability of Bounds, Petitioners' brief nonetheless conspicuously fails to include any substantive discussion of the record in this case, and fails to acknowledge that the district court conducted a trial and made detailed and numerous findings of fact. Instead, Petitioners argue that they should be free to implement Bounds by whatever means they choose, without court interference. This would practically nullify prisoners' right of access to the courts. If the spirit and effect of Bounds v. Smith is to be preserved, then the equitable relief granted by the district court must be affirmed.

I. MANY OF THE SEMINAL PRISONER RIGHTS CASES DECIDED BY THIS COURT IN THE LAST TWO DECADES WERE FILED BY PRISONERS PRO SE; THE ABILITY OF THESE PRISONERS TO BRING THEIR CASES TO THE ATTENTION OF THE FEDERAL COURTS WAS CRITICAL TO THE PROTECTION OF THEIR FUNDAMENTAL CONSTITUTIONAL RIGHTS AND TO THE DEVELOPMENT OF FEDERAL LAW GOVERNING CONDITIONS OF CONFINEMENT.

As this Court has "'constantly emphasized,' habeas corpus and civil rights actions are of fundamental importance ... in our constitutional scheme' because they directly protect our most valued rights." Bounds v. Smith, 430 U.S. 817, 827 (1977). Indeed, prisoner petitions are "the first line of defense against constitutional violations." Id. at 828. See DeMallory v. Cullen, 855 F.2d 442, 446 (7th Cir. 1988) ("A prison inmate's right of access to the courts is the most fundamental right he or she holds.").

A review of the major prisoner rights cases decided by this Court in the last quarter century reveals that many of these cases began as prisoner pro se complaints. This demonstrates the essential role that pro se litigation has played in the development of this Court's prisoner related jurisprudence. The cases further illustrate the importance of law libraries and trained legal assistance in allowing prisoners to bring their claims, even in the most rudimentary form, and to defend their complaints against dismissal. See 28 U.S.C. § 1915(d); Fed. R. Civ. P. 12 and 56.

The fundamental constitutional right of access to the courts guarantees the right "to file cases raising claims that are serious and legitimate even if ultimately unsuccessful." Bounds, 430 U.S. at 826-27. To appreciate fully the impact that prisoner pro se litigation has had on prisoner rights jurisprudence, we will review representative cases decided by this Court. Although, the prisoner plaintiffs were not always victorious, the cases clarified the obligations facing the jailers as well as the rights of the prisoners, and they posed substantial constitutional claims. Moreover, "'[d]efensive' measures taken in response to prisoner lawsuits have resulted in changes even though the suits were ultimately lost by the prisoner." Turner, When Prisoners Sue: A Study of Prisoner Section 1983 Suits in the Federal Courts, 92 Harv. L. Rev. 609, 639-40 n. 148 (1979). Indeed, the mere right of access to the courts, even if unexercised, can result in increased accountability and positive prison reform. Id. at 639 n. 146.

Major cases governing the application of the Cruel and Unusual Punishments Clause were initiated by prisoners acting pro se. Helling v. McKinney, 509 U.S. ___, 125 L.Ed.2d 22 (1993), for example, held that a complaint alleging constant exposure to secondary cigarette smoke states a valid Eighth Amendment claim for injunctive relief. The complaint, which alleged that plaintiff's cellmate smoked five packs of cigarettes a day, was filed pro se, and the plaintiff was pro se in the circuit court. McKinney v. Anderson, 959 F.2d 853 (1992); McKinney v. Anderson, 924 F.2d 1500 (9th Cir. 1991). Rhodes v. Chapman, 452 U.S. 337 (1981), held that overcrowding may amount to cruel and unusual punishment, but that double celling is not per se unconstitutional. The complaint was filed pro se. Chapman v. Rhodes, 434 F. Supp. 1007, 1008 (S.D. Ohio 1977).

In Superintendent v. Hill, 472 U.S. 445 (1985), the Court held that due process judicial review of a lock-up placement decision is limited to determining whether there is some evidence in the record to support the prison administrator's placement decision. The case was instituted by the filing of two pro se complaints. Hill v. Superintendent, 466 N.E.2d 818, 819 (Mass. 1984). Hughes v. Rowe, 449 U.S. 5 (1980), held that even if a hearing accorded to a prisoner after placement in solitary confinement minimizes or eliminates any compensable harm resulting from the initial denial of procedural safeguards, a prisoner's constitutional claim that he was unjustifiably placed in segregation without a prior hearing is actionable. The plaintiff, who spent 10 days in solitary confinement, was pro se in the district and circuit courts and in the Supreme Court. Id., 449 U.S. at 8.

In Hudson v. McMillian, 503 U.S. 1, 117 L.Ed.2d 156 (1992), the Court addressed a correctional officer's use of excessive force and held that it may constitute cruel and unusual punishment even when the prisoner does not suffer serious injury. The plaintiff, who suffered punches "in the mouth, eyes, chest and stomach" that "cracked" his dental plate, "split his lower lip and loosened his teeth," was pro se in the district and circuit courts. Hudson v. McMillian, 929 F.2d 1014, 1015 (5th Cir. 1990).

The disciplinary rights of prisoners, and the concomitant powers of correctional officials, have also been addressed in cases brought by prisoners acting pro se. Bell v. Wolfish, 441 U.S. 520 (1979), held that maintaining institutional security and preserving internal order and discipline are essential goals that may require limitation or retraction of retained constitutional rights of both convicted prisoners and pretrial detainees. The case was originally filed pro se. United States ex rel. Wolfish v. United States, 428 F. Supp. 333, 334-35 (S.D.N.Y.

1977). Hutto v. Finney, 437 U.S. 678 (1978), established limitations on the use of disciplinary solitary confinement in harsh conditions. The individual and class cases were all filed pro se by plaintiffs who alleged truly medieval conditions of confinement. Holt v. Sarver, 309 F. Supp. 362, 364 (E.D. Ark 1970); Holt v. Hutto, 363 F. Supp. 194, 198 (E.D. Ark. 1973); Finney v. Hutto, 410 F. Supp. 251, 253 (E.D. Ark. 1976). The district court found that "sometimes as many as 10 or 11 ... prisoners were crowded into windowless 8' x 10' cells [with] a toilet that could only be flushed from outside the cell. Although some prisoners suffered from infectious diseases such as hepatitis and venereal disease, mattresses were removed and jumbled together each morning, then returned to the cells at random each evening. Prisoners in isolation received fewer than 1000 calories a day; their meals consisted primarily of 4-inch squares of 'grue'..." Hutto, 437 U.S. at 682-83. And Wolff v. McDonnel, 418 U.S. 539 (1974), held that procedural due process is required in disciplinary hearings. The case was originally filed pro se. McDonnel v. Wolff, 342 F. Supp. 616, 617 (D. Neb. 1972).

The obligation of prison official to provide medical care and to protect inmates from harm has also been substantially established by prisoners acting without attorneys. In Estelle v. Gamble, 429 U.S. 97 (1976), the Court held that the government has an obligation to provide medical care to prisoners; the Eighth Amendment is violated if the prisoner demonstrates acts or omissions indicating deliberate indifference to serious medical needs. In that case, the state "totally failed to provide adequate treatment" of plaintiff's serious back condition, requiring him to work and punishing him for his complaints. Plaintiff was pro se in the district court. Gamble v. Estelle, 516 F.2d 937, 940, 941 (5th Cir. 1975). Farmer v. Brennan, 511 U.S. ___, 128 L.Ed.2d 811 (1994),

decided two Terms ago, clarified the showing necessary to sustain a prisoner's claim that a prison official failed to protect him from assault. Plaintiff, a transsexual who was beaten and raped by a fellow prisoner, was pro se in the district and circuit courts. Id., 128 L.Ed.2d at 821. And in Davidson v. Cannon, 474 U.S. 344 (1986), the Court held that an inmate, assaulted by a fellow inmate, is not deprived of due process when prison officials fail to prevent the assault; due process rights of a prisoner would be violated if the attack were perpetrated by prison guards, or if prison guards allowed an attack by a fellow prisoner to proceed. Plaintiff was pro se in the district court. Davidson v. O'Lone, 752 F.2d 817, 820 (3rd Cir. 1984).

Important prison First Amendment cases were similarly initiated by prisoners acting pro se. Two early First Amendment cases were each initiated by prisoners. Pell v. Procunier, 417 U.S. 817 (1974), held that media interviews with prisoners may be limited. Plaintiff was originally pro se in the district court, where the district judge observed that "[t]his case has its humble origins in a complaint drafted by a lay prisoner serving time at San Quentin." Hillery v. Procunier, 364 F. Supp. 196, 197 (N.D. Cal. 1973). Cruz v. Beto, 405 U.S. 319 (1972), held that causes of action were stated under the First and Fourteenth Amendments when Buddhist prisoners were denied benefits enjoyed by other prisoners and were punished because of the exercise of their religious beliefs. The complaint was filed pro se. Cruz v. Beto, 329 F. Supp. 443, 444 (S.D. Tex. 1970). Cooper v. Pate, 378 U.S. 546 (1964), held that a cause of action was stated when a prisoner claimed that he was denied privileges enjoyed by other prisoners solely because of his religious beliefs. Plaintiff was pro se in the district and circuit courts and in the Supreme Court. Id.; Cooper v. Pate, 324 F.2d 165 (7th Cir. 1963).

The visitation rights of prisoners were addressed in Kentucky Dept. of Corrections v. Thompson, 490 U.S. 454 (1989), where the Court held that state regulations containing a nonexhaustive list of categories of prison visitors who may be excluded does not give prisoners a liberty interest in receiving visitors who are not members of the enumerated categories. Plaintiffs were originally pro se in the district court. Kedrick v. Bland, 541 F. Supp. 21, 22 (W.D. Ky. 1981), aff'd, 740 F.2d 432 (6th Cir. 1984); Thompson v. Kentucky Dept. of Corrections, 833 F.2d 614, 615 (6th Cir. 1987).

Parole and probation revocation is also governed by principles established in cases brought by prisoners acting pro se. Morrissey v. Brewer, 408 U.S. 471 (1972), held that due process requires a hearing before parole revocation, including written notice of the claimed violations, disclosure of evidence against the parolee, an opportunity to be heard and a detached hearing body. Plaintiff was pro se in the district court. Morrissey v. Brewer, 443 F.2d 942, 945 (8th Cir. 1971). In Montanye v. Haymes, 427 U.S. 236 (1976), the Court held that the Due Process Clause does not require a hearing prior to transfer of a prisoner to another institution for violation of prison rules. The complaint was filed pro se. United States v. Montanye, 505 F.2d 977, 979 (2d Cir. 1974). In Sandin v. Connor, 515 U.S. ___, 132 L.Ed.2d 418 (1995), decided last Term, the Court held that neither Hawaii prison regulations nor the Due Process Clause creates a liberty interest that would entitle prisoners to protections under the Fourteenth Amendment concerning disciplinary hearings. Plaintiff was pro se in the district and circuit courts. Connor v. Sakai, 15 F.3d 1463 (9th Cir. 1993). Similarly, California Dept. of Corrections v. Morales, 514 U.S. ___, 131 L.Ed.2d 588 (1995), holding that application of a California statute allowing a decrease in the frequency of parole suitability hearings does not violate the Ex Post

Facto Clause, was brought by a plaintiff who was pro se in the district and circuit courts. Morales v. California Dept. of Corrections, 16 F.3d 1001, 1002 (9th Cir. 1994).

Important cases governing procedure and remedies were also decided by the Court after prisoners filed pro se complaints. In Hardin v. Straub, 490 U.S. 536 (1989), the Court held that a federal court applying a state statute of limitations to a state prisoner's 42 U.S.C. § 1983 action is required to apply the state's statute tolling the limitations period for prisoners. The case originated with a pro se complaint alleging that for approximately 180 days in 1980 and 1981 plaintiff had been held in solitary confinement. Id. at 537. Castille v. Peoples, 489 U.S. 346 (1989), held that the federal habeas corpus requirement of exhaustion of state remedies is not satisfied by presentation of a new claim to a state's highest court on discretionary review. The case originated with a pro se petition. Id. at 347. And in Houston v. Lack, 487 U.S. 266 (1988), the Court held that a pro se prisoner's notice of appeal was timely at the moment of delivery to prison authorities for mailing to the court. Plaintiff was pro se for all of the district court proceedings and for part of the circuit court proceedings. Id. at 268-69.

Two major cases involving the interrelationship between habeas corpus principles and 42 U.S.C. § 1983 were initiated by prisoners without counsel. Wolff v. McDonnel, 418 U.S. 539 (1974), held that a section 1983 claim based on denial of due process must be exhausted in state court if the plaintiff seeks restoration of good time credits, but not if plaintiff seeks damages. The case was originally filed pro se. McDonnel v. Wolff, 342 F. Supp. 616, 617 (D. Neb. 1972). Similarly, Preiser v. Rodriguez, 411 U.S. 475 (1973), held that habeas corpus is the sole federal remedy of an inmate challenging the fact or duration of imprisonment, and exhaustion of state court

remedies is required. The case was originally filed pro se in the district courts. Rodriguez v. McGinnis, 307 F. Supp. 627 (N.D.N.Y. 1969); Kritsky v. McGinnis, 313 F. Supp. 1247 (N.D.N.Y. 1970).[3/]

[3/] A review of the major prisoner rights cases from the Ninth Circuit Court of Appeals similarly reveals that many of the cases began and were litigated pro se. In light of the vast prison populations in California and other states in the Ninth Circuit, cases from that circuit represent the course and significance of prisoner pro se litigation in the lower federal courts in the last 20 years:

A. The Substantive Rights of Prisoners

1. Cruel and Unusual Punishment: Limitations on the State's Power to Punish

Jackson v. Arizona, 885 F.2d 639 (9th Cir. 1989) (allegations of unsanitary food handling and polluted water state a cause of action under the Eighth Amendment). The complaint was filed pro se and the plaintiff was pro se in the circuit court.

Akao v. Shimoda, 832 F.2d 119 (9th Cir. 1987), cert. denied, 485 U.S. 993 (1988) (allegation of overcrowding without more does not state an Eighth Amendment claim; however, allegations of increased stress, tension, communicable disease and violence from overcrowding could state a claim). Plaintiff was pro se in the district court. Id.

Balla v. Idaho State Bd. of Corrections, 656 F. Supp. 1108 (D. Idaho 1987) (prison overcrowding, requiring double and triple celling of some inmates

(continued...)

[3/](...continued)
constitutes unnecessary and wanton infliction of pain in violation of the Eighth Amendment), aff'd in part, rev'd in part, 869 F.2d 461 (9th Cir. 1989). Plaintiffs were pro se in the district court. 656 F. Supp. at 1109.

Jordan v. Gardner, 986 F.2d 1521 (9th Cir. 1992) (en banc) (prison policy allowing male guards to conduct clothed body searches of female prisoners was cruel and unusual punishment). The Plaintiff was pro se in the district court. Jordan v. Gardner, 953 F.2d, 1137, 1139 (9th Cir. 1992).

2. Treatment of Prisoners: The State's Affirmative Obligations

Hunt v. Dental Dept., 865 F.2d 198 (9th Cir. 1989) (deliberate indifference to prisoner's severe dental problems states a claim under 42 U.S.C. § 1983). Plaintiff was pro se in the district and circuit courts. Id. at 199.

Bonner v. Lewis, 857 F.2d 559 (9th Cir. 1988) (failure to provide sign language interpreter to deaf inmate which serves to deny access to prison activities violates the Rehabilitation Act). Plaintiff was pro se in the district court. Id. at 561.

3. The First Amendment

Johnson v. Moore, 948 F.2d 517 (9th Cir. 1991) (prison need only provide inmates a reasonable opportunity to worship in accord with their conscience).

(continued...)

3/(...continued)
Plaintiff was pro se in the district and circuit courts. Id. at 517.

4. Access to the Courts

Ching v. Lewis, 895 F.2d 608 (9th Cir. 1990) (arbitrary denial of contact visits by prisoner's attorney violates right to meaningful access to the courts). Plaintiff was pro se in the district and circuit courts. Id. at 609.

Taylor v. List, 880 F.2d 1040 (9th Cir. 1989) (Sixth Amendment right to self-representation includes right to law books, witnesses and other tools necessary to prepare a defense). Plaintiff was pro se in the district and circuit courts. Id. at 1042.

Valandingham v. Bojorquez, 866 F.2d 1135 (9th Cir. 1989) (pro se prisoner has the right to undertake investigation and documentation of his claims in manner than an attorney would, subject to security and disciplinary requirements). Plaintiff was pro se in the district and circuit courts. Id. at 1136.

King v. Atiyeh, 814 F.2d 565 (9th Cir. 1987) (state must provide indigent prisoners with postage stamps to mail legal documents). Plaintiff was pro se in the district and circuit courts. Id. at 567.

B. The Rights of Pretrial Detainees

Thompson v. City of Los Angeles, 885 F.2d 1439 (9th Cir. 1989) (forced strip search of grand theft auto

(continued...)

3/(...continued)
arrestee at county jail does not constitute unlawful search because offense was sufficiently associated with violence). Plaintiff was pro se in district and circuit courts. Id. at 1441.

C. The Procedural Rights of Prisoners

1. Release and Forfeiture of Good Time Credits Before Release.

Bermudez v. Duenas, 936 F.2d 1064 (9th Cir. 1991) (a protected liberty interest in parole may be created by statute, regulations or public policies as long as specific, mandatory language is used). Plaintiff was pro se in the district and circuit courts. Id. at 1065.

Bergen v. Spaulding, 881 F.2d 719 (9th Cir. 1989) (state early release statutes can create liberty interests protected by due process guarantees). Plaintiff was pro se in the district and circuit courts. Id. at 720.

2. Maintenance of Records

Fendler v. United States Bureau of Prisons, 846 F.2d 550 (9th Cir. 1988) (Privacy Act requires Bureau of Prisons to maintain records with such accuracy as is reasonably necessary to ensure fairness). Plaintiff was pro se in the district and circuit courts. Id. at 551.

D. Jurisdiction, Procedure and Remedies

Puett v. Blandford, 912 F.2d 270 (9th Cir. 1990) (pro se prisoner is entitled to rely on United States

(continued...)

The breadth and scope of the constitutional issues addressed in each of the cases we have identified attest to the significance of pro se prisoner rights litigation. Ever since Clarence Earl Gideon hand-wrote his petition to this Court attacking his conviction on the ground that he was refused counsel, Gideon v. Wainwright, 372 U.S. 335 (1963),[4] the profound importance of pro se prisoner complaints in this country's constitutional jurisprudence has been well-known. "Some in forma pauperis cases have restructured the fundamental framework for our system of justice." McTeague v. Sosnowski, 617 F.2d 1016, 1019 (3d Cir. 1980). In the prison civil rights and habeas corpus context, pro se complaints and petitions have been responsible for changing the face of American correctional philosophy and for the establishment of a correctional system which properly reflects current standards of decency and humanity and acknowledges important constitutional restraints on the otherwise unrestricted power of prison authorities. Cf. Rhodes v. Chapman, 452 U.S. 337, 354 (1981)(Brennan, J., concurring) (emphasis in original) ("[T]he lower courts have learned from repeated investigation and bitter experience that judicial intervention is indispensable if constitutional dictates -- not to mention considerations of basic humanity -- are to be observed in the prisons.").

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[3](...continued)
Marshall for service of summons and complaint). Plaintiff was pro se in the district and circuit courts. Id. at 271.

[4] See A. Lewis, Gideon's Trumpet (1964) at 4.

Without the fundamental right of access to the courts, guaranteed by Bounds v. Smith, these cases could not have been brought. Prisons would be even more crowded. Rhodes v. Chapman, 452 U.S. 337 (1981). Prisoners would face the constant threat of physical brutality, unreasonable body cavity searches and forced blood tests, and illegal solitary confinement. Hudson v. McMillian, 503 U.S. 1, 117 L.Ed.2d 156 (1992); Hutto v. Finney, 437 U.S. 678 (1978); Bell v. Wolfish, 441 U.S. 520 (1979); Walker v. Sumner, 917 F.2d 382 (9th Cir. 1990). Prison officials would discipline prisoners without the constraints of due process. Wolff v. McDonnel, 418 U.S. 539 (1974). Prison doctors would deliberately ignore the serious medical needs and pain and suffering of prisoners in their care. Estelle v. Gamble, 429 U.S. 97 (1976). Disabled prisoners would be denied access to rehabilitative activities. Bonner v. Lewis, 857 F.2d 559 (9th Cir. 1988). Religious prisoners would be punished because of the exercise of their religious beliefs. Cruz v. Beto, 405 U.S. 319 (1972); Cooper v. Pate, 378 U.S. 546 (1964). And prisoners would face illegal parole revocation without hearings or other requirements of due process. Morrissey v. Brewer, 408 U.S. 471 (1972).

For the past 20 years, the exercise of prisoners' meaningful right of access to the courts has been the single most important driving force behind the protection of their "most valued rights." Bounds v. Smith, 430 U.S. at 827. The cases noted above, and hundreds more like them throughout the United States, have truly been "the first line of defense against constitutional violations." Id. at 828. Without meaningful court access, made possible by the

proper combination of libraries and legal assistance,[5/] it is certain that prisoners throughout this country would be suffering profoundly inhumane and cruel conditions, and that epidemic violation of their constitutional rights would be the norm.

The arguments that prisoners do not require adequate law libraries or adequately trained legal assistance (1) because "[i]t requires relatively little research to bring to a court's attention a claim that a fundamental right has been violated," Brief Amicus Curiae of the Criminal Justice Legal Foundation at 15, or (2) because "inmates engaged in pro se litigation ... need only identify the general nature of their claims and the alleged facts supporting them," Brief of Petitioners at 24, are refuted by common sense and by the clear holding of Bounds v. Smith. First, the immense complexity of the constitutional claims alleged in prisoner rights cases refutes the naive assertion that "relatively little research" is required to bring these claims. The statement that "the classics of constitutional law are well-known and readily found through elementary research," and that therefore only a "very limited library" is required, Brief Amicus Curiae of the Criminal Justice Legal Foundation at 15, could only be made by someone with little experience in constitutional litigation. If the

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[5/] Our position is not that legal assistance is required for all prisoners. Rather, consistent with the injunction in this case, legal assistance should be provided to prisoners who, "because of language factors or lack of access to the law library, or for other reasons, are unable to perform adequate legal research and writing." Casey v. Lewis, 43 F.3d 1261, 1271 (9th Cir. 1994) (citing permanent injunction at 11). Prison authorities may satisfy their constitutional obligations by providing direct access to adequate law libraries for all other prisoners.

issues were so simple, these cases would not have occupied the time and attention of this Court and the lower federal and state courts, and would not have resulted in the issuance of countless majority and dissenting opinions.

Second, this Court in Bounds considered and explicitly rejected the argument, made by Petitioners here, that access to legal materials and assistance is not necessary because habeas corpus petitions and civil rights complaints need only set forth facts giving rise to the cause of action. "[I]t hardly follows that a law library or other legal assistance is not essential to frame such documents." Bounds, 430 U.S. at 825. The Court noted that "[i]t would verge on incompetence" for a lawyer to file an initial pleading without researching such issues as jurisdiction, venue, standing, exhaustion of remedies, and the types of relief available. Id. "Most importantly, of course, a lawyer must know what the law is in order to determine whether a colorable claim exists, and if so, what facts are necessary to state a cause of action." Id.

> If a lawyer must perform such preliminary research, it is no less vital for a pro se prisoner. Indeed, despite the "less stringent standards" by which a pro se pleading is judged, it is often more important that a prisoner complaint set forth a nonfrivolous claim meeting all procedural prerequisites, since the court may pass on the complaint's sufficiency before allowing filing in forma pauperis and may dismiss the case if it is deemed frivolous.

Id., at 825-26 (footnote and citations omitted). See 28 U.S.C. §1915(d).[6/]

Not only do prisoners require legal materials and assistance in order to set forth legitimate claims for relief, such materials and assistance are critical to ensuring that prisoner's claims make it past the pleading stage. In defending a motion to dismiss or for summary judgment on qualified immunity grounds, for example, a pro se plaintiff absolutely requires access to a prison law library or to trained legal assistance in order to prove that the facts alleged in the complaint show a violation of "clearly established law." Johnson v. Jones, 515 U.S. ___, 132 L.Ed.2d 238, 246 (1995). Similarly, a prisoner attempting to avoid summary dismissal of his petition for habeas corpus must be able to research and challenge the States "seemingly authoritative citations" and to "rebut the State's argument." Bounds, 430 U.S. at 826. It is grossly unfair if the state attorneys have access to a law library, and the prisoner does not.

The complexity of civil rights complaints and habeas corpus petitions requires that prisoners be provided with that combination of law books and legal assistance necessary to properly frame their complaints, to avoid

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[6/] Given the sheer number of prisoners nationwide, and the number of corresponding prisoner cases filed with the courts, the time has long since passed when a hand-scrawled, illegible and uneducated petition can catch the attention of a court and result in the granting of relief or even a considered decision denying relief. The present day reality is that, "[w]ithout a library or legal assistance ... valid claims will undoubtedly be lost." Bounds, 430 U.S. at 828 n. 16.

summary dismissal, and to achieve meaningful access to a judicial forum.

II. IN LIGHT OF THE FACT THAT PRISONERS NOW FACE EXTREME MANDATORY CRIMINAL PENALTIES, AND MUST NAVIGATE A HIGHLY TECHNICAL HABEAS CORPUS AND POST-CONVICTION APPEALS PROCESS, THEIR RIGHT OF ACCESS TO THE COURTS IS MORE CRITICAL TODAY THAN AT ANY TIME IN THE PAST.

Since Bounds v. Smith was decided in 1977, mandatory minimum sentences required by the United States Sentencing Guidelines and state laws, and state and federal "three strikes" sentencing requirements, have dramatically changed the landscape that defines the punishment of criminal defendants. See, e.g., 18 U.S.C. § 3559(c) (conviction for third serious violent felony results in life imprisonment); Cal. Penal Code § 667(e) (conviction for third felony results in indeterminate term of life imprisonment).

Under "'three strikes and you're out' (or more precisely 'three strikes and you're in') legislation, ... a single current offense can (without encroaching on the Ex Post Facto Clause) visit previously-undreamed-of severity on a defendant whose past includes two convictions that did not carry a price tag even approaching what the new law has now prescribed." United States v. Bailey, 892 F.Supp. 997, 1020 (N.D. Ill. 1995). "[T]he failure of the Sentencing Guidelines to provide certainty in sentencing has given rise to the proliferation of mandatory minimum sentences. [However,] [s]ince no sentencing certainty is to be found in mandatory minimum sentencing either, we

careen on to 'three strikes and you're out' and an expanded list of crimes carrying the death penalty. Where will it end?" United States v. Angiulo, 852 F. Supp. 54, 60 n.10 (D. Mass. 1994), aff'd, 57 F.3d 38 (1st cir. 1995).

The extreme severity of current federal and state mandated sentences demands that prisoners be provided with a meaningful right of access to the courts. The greater the penalties, the greater the need to ensure that only the guilty are punished and that only legally appropriate punishments are inflicted.

Similarly, since Bounds was decided, habeas corpus proceedings have become extraordinarily complex; prisoners seeking post-conviction relief face a minefield of procedural requirements, and one misstep can forever bar them from relief. Given this reality, the right of access to the courts, made possible through the provision of law libraries and legal assistance, is more essential than ever to ensuring that the writ truly remains "the first line of defense against constitutional violations." Bounds, 430 U.S. at 826.

The Court has recognized that "[t]he writ of habeas corpus is the fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action." Harris v. Nelson, 394 U.S. 286, 290-91 (1969). It is the procedure for resolving "all dispositive constitutional claims presented in a proper procedural manner." McCleskey v. Zant, 499 U.S. 467, 479, (1991). The Court's reverence for and protection of the writ of habeas corpus mandates that prisoners be guaranteed access to the courts to seek such relief. Indeed, prisoners' need for access to the courts through the provision of legal materials and trained legal assistance is especially critical in light of the Court's decision in McCleskey, where the court held that a prisoner is barred

from asserting a constitutional claim in a subsequent federal habeas corpus proceeding if he did not raise the claim in his initial federal application and cannot show either good cause for failing initially to raise the claim and prejudice resulting from such failure, or that a fundamental miscarriage of justice would result if the claim were not entertained.

In light of McCleskey, "a prisoner applying for habeas corpus relief in federal court must assert all possible violations of his constitutional rights in his initial application or run the risk of losing what might be a viable claim. This is a substantial burden." Brown v. Vasquez, 952 F.2d 1164, 1167 (9th Cir. 1991), cert. denied, 503 U.S. 1011 (1992). Compounding this burden, the petitioner "must decipher a complex maze of jurisprudence in order to determine which of his constitutional rights, if any, may have been violated." Id. Such a task is "difficult even for a trained lawyer to master," and is often beyond the abilities of most prisoners. Murray v. Giarratano, 492 U.S. 1, 28 (1989) (Stevens, J. dissenting).

While we recognize that many prisoners are illiterate and poorly educated, and that the provision of law libraries and assistance will not erase entirely the inherent inequities of a system in which untrained prisoners must bring their own complex claims for post conviction relief without the assistance of counsel, an expansive right of access to the courts in this context is both practically and constitutionally required. Indeed, it is as true today as it was when Bounds was decided that, "[w]ithout a library or legal assistance ... valid claims will undoubtedly be lost." Bounds, 430 U.S. at 828 n. 16. "We should not romanticize what even a jailhouse lawyer, much less a poorly-educated inmate, can accomplish by rummaging for a few hours in a limited collection.... But as long as one prisoner is unjustly detained or one prisoner maltreated a

life line to the courts is precious. In the context of this case the ... prisoners' library is part of the lifeline." Toussaint v. McCarthy, 926 F.2d 800, 803-04 (9th Cir. 1990).

III. THERE ARE SIGNIFICANT COLLATERAL BENEFITS TO ENSURING PRISONERS' RIGHT OF MEANINGFUL ACCESS TO THE COURTS THROUGH THE PROVISION OF LAW LIBRARIES AND TRAINED LEGAL ASSISTANCE.

Not only is a meaningful right of access to the courts constitutionally required, but the provision of access through the availability of legal materials and assistance results in a diminution in the number of groundless complaints and incomprehensible habeas petitions, and in significant collateral benefits to all stakeholders in the prisoner litigation context -- the prisoners, prison authorities, the public and the courts. Even the state defendants in Bounds argued that adequately assisted prisoner litigants will be less likely to file frivolous petitions and complaints. Seeking a grant to fund the court-approved library plan, they stated:

> [T]he ultimate result ... should be a diminution in the number of groundless petitions and complaints filed.... The inmate himself will be able to determine to a greater extent whether or not his rights have been violated and judicial evaluation of the petitions will be facilitated.

Bounds, 430 U.S. at 821 (quotations omitted).

The Court agreed with these arguments, and noted the additional benefits that would accrue from the provision of a formal legal assistance program, which would "result in more efficient and skillful handling of prisoner cases...." Id. at 831. "Independent legal advisors can mediate or resolve administratively many prisoner complaints that would otherwise burden the courts, and can convince inmates that other grievances against the prison or the legal system are ill-founded...." Id.

The commentators and lower federal courts have come to the same conclusion -- that prison legal assistance programs discourage the filing of frivolous claims and promote the administrative resolution of prisoner grievances, thereby reducing the volume of prisoner litigation. As one district court put it: "[M]any inmates, unversed in the law as they are, are unable to know they even have a colorable claim, let alone how to frame it properly as a cause of action, unless they first have access to adequate legal resources or advice." Reutke v. Dahm, 707 F. Supp. 1121, 1129 (D. Neb. 1988). See also Bluth, Legal Services for Inmates: Coopting the Jailhouse Lawyer, 1 Cap. U. L. Rev. 59, 62 (1972) (Prisoners "without meritorious cases were often the ones most in need of reliable legal advice."); Turner, 92 Harv. L. Rev. at 636 ("There is no evidence that providing counsel for prisoners encourages the filing of suits. Indeed, many believe that the availability of in-prison counseling reduces the volume of litigation."); id. ("[C]ases that are filed with legal assistance are more likely to be meritorious, to pose the precise issue and relief sought, and to contribute to judicial efficiency by relieving the courts of their deciphering-screening burden.").

There is also little doubt that, while the provision of adequate law libraries and formal legal assistance programs does not eliminate the filing of all imperfect habeas

petitions, a reduction in prisoners' meaningful right of access to legal resources would exacerbate already profound problems faced by the federal judiciary. The product of unassisted prisoners "is often a confusing and incomprehensible amalgam of claims which not only fails to protect the prisoner, but which ties up valuable court time in the inevitable struggle to comprehend what it is that is being alleged." Brown, 952 F.2d at 1167. Indeed, this Court has recognized "the problems in judicial administration caused by the surfeit of meritless in forma pauperis complaints in the federal courts, not the least of which is the possibility that meritorious complaints will receive inadequate attention or be difficult to identify amidst the overwhelming number of meritless complaints." Neitzke v. Williams, 490 U.S. 319, 326 (1989). See also Johnson v. Avery, 393 U.S. 483, 488 (1969); Murray, 492 U.S. at 29-30 (Stevens, J., dissenting).

The provision of access to the courts through the availability of legal materials and trained legal assistance reduces the number of groundless complaints and incomprehensible habeas petition. Cutting back on the right of access will have the opposite effect, and will harm not only the prisoner litigants, but the courts and the public.

CONCLUSION

The right of access to the courts is critical to the protection of prisoners' other fundamental constitutional rights, is essential to prisoners' ability to bring highly technical habeas corpus petitions, appeals, and civil rights claims, and reduces the number of frivolous prisoner complaints and petitions.

We urge the Court to affirm the district court injunction and to reaffirm the vitality of Bounds v. Smith.

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